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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Federal-State Joint Board on  
Universal Service

CC Docket No. 96-45

**AT&T OPPOSITION TO PETITIONS FOR RECONSIDERATION**

Pursuant to the Commission's Public Notice, Report No. 2260, released March 3, 1998 and published in the Federal Register on March 10, 1998 (63 Fed. Reg. 11678), and Section 1.429 of the Commission's Rules, AT&T Corp. ("AT&T") submits this opposition to certain petitions for reconsideration of the Commission's Fourth Reconsideration Order in this proceeding.<sup>1</sup>

The success of universal service requires competitive neutrality and a broad contribution base. In the May 8, 1997 Universal Service Order<sup>2</sup> (paras. 777-

<sup>1</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourth Order on Reconsideration, FCC 97-420, released December 30, 1997 ("Fourth Reconsideration Order").

<sup>2</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997, pets. for review pending sub nom. Texas Office of Public Utility Counsel v. FCC, Nos. 97-60421 et al. (5<sup>th</sup> Cir.) ("Universal Service Order"), *id.*, Order on Reconsideration, FCC 97-246, released July 10, 1997; Second Order on Reconsideration, FCC 97-253, released July 18, 1997; Third Order on Reconsideration, FCC 97-411, released December 16, 1997; Fourth Order on Reconsideration, FCC 97-420, released December 30, 1997. Unless

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791), the Commission determined -- correctly in AT&T's view -- that, under Section 254(d) of the Telecommunications Act of 1996, all interstate telecommunications service providers offering service for a fee directly to the public on a common carrier basis are mandatory contributors to the federal USF. The Commission also determined that private service providers that offer interstate telecommunications services to others for a fee on a noncommon carrier basis must contribute under Section 254(d)'s permissive authority (paras. 793-796).

In particular, as AT&T has previously shown, the modifications that the Commission made to the USF in its Fourth Reconsideration Order have inappropriately constricted the USF contribution base and, in the long term, will jeopardize the viability of the program.<sup>3</sup> For example, the exemption for system integrators' resale telecommunications revenues, so long as they do not comprise more than 5 percent of the firm's total system integration revenues,<sup>4</sup> could exempt substantial amounts

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another Order is specifically referenced, all paragraph citations herein are to the Universal Service Order.

<sup>3</sup> AT&T Comments on Report to Congress, filed January 26, 1998, CC Docket No. 96-45, at 5-8.

<sup>4</sup> Fourth Reconsideration Order, para. 280.

of retail telecommunications revenues from USF contributions (5% of a \$200 million revenue stream being \$10 million).

The exemption from USF contributions accorded to nonprofit schools, colleges, libraries and health care providers<sup>5</sup> is likewise ill-conceived particularly given that the fact that an entity is a *recipient* of USF funds cannot logically be deemed sufficient to exempt it from USF *contribution obligations*.<sup>6</sup> Moreover, because systems integrators and educational resellers potentially compete with interexchange carriers, competitive neutrality requires that these types of entities be required to contribute on the basis of the retail telecommunications service revenues that they derive from resale and facilities-based provision of telecommunications service.<sup>7</sup> AT&T also believes that the

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<sup>5</sup> Fourth Reconsideration Order, para. 284.

<sup>6</sup> According to this erroneous rationale, a local exchange carrier could not be required to contribute to universal service support if it received high cost or low-income support. Moreover, colleges (unlike K through 12 schools and libraries) are not eligible for discounts under Section 254.

<sup>7</sup> Other contributors are clearly harmed if these entities fail to report their resale telecommunications revenues but pay a USF obligation to AT&T when they are billed for their long distance services. In this instance the total industry contribution base is understated by the margins added by the reseller when it bills its customers. If the total industry amount is understated, AT&T and other contributors pay a higher amount.

Commission should not have increased the *de minimis* exception from USF contributions from \$100 to \$10,000.<sup>8</sup> The ultimate responsibility for universal service resides with the end-user subscriber and, consistent with this premise, no carrier -- regardless of its size -- should be exempt.

Not surprisingly, the petitions for reconsideration confirm AT&T's view that those exemptions will open the floodgates for further relief and create enormous potential for abuse. For example, Amtrak (at 3-8) seeks an exemption from USF contribution obligations by analogy to: (i) the nonprofit schools, colleges, libraries and health care provider exemption (claiming payment would be contrary to its mission); and (ii) the system integrator exemption (asking that any firm with *de minimis* telecommunications revenues should be exempt). Amtrak also contends that it is statutorily exempt from additional taxes on its real and personal property and therefore is not obligated to contribute to the USF. Amtrak's claim for exemption should be denied. The exemptions for schools, colleges etc., as well as the systems integrator exemption, are unjustified and should be rescinded; they certainly should not be expanded. In addition, the Commission has already determined that USF

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<sup>8</sup> Fourth Reconsideration Order, para. 297.

assessments are not "taxes" and therefore Amtrak's statutory claim for exemption must fail.<sup>9</sup>

AT&T agrees with CTIA that the Commission should not have exempted resellers with under \$10,000 of retail revenues and ordered facilities-based carriers to treat them as end users. Quite the contrary, the whole point of a retail assessment dictates that a reseller must be assessed USF support obligations on its retail revenues. The potential for abuse of the current \$10,000 exemption from contribution obligations is substantial. For example, a single reseller could buy service from AT&T; based on proper identification of the purchaser as a reseller, AT&T would regard the revenue it receives from the reseller as wholesale revenue. The reseller then could, in turn, resell to numerous separate subsidiaries and claim its receipts to be wholesale revenue. If enough subsidiaries are created, then each could fall under the \$10,000 *de minimis* exemption, with the effect that a substantial telecommunications revenue stream escapes USF payment obligations altogether, thereby forcing upward the contribution amounts of others.<sup>10</sup> Moreover, as CTIA points out (at 6), "[i]f the

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<sup>9</sup> Universal Service Order, para. 598.

<sup>10</sup> Whether or not resellers are already pursuing such tactics to evade contributing to the USF is an open issue. AT&T notes that a substantial percentage of its reseller customers have not requested the resale waiver of AT&T's tariffed Universal Service

underlying carrier is burdened with the total universal service contribution and treats the resale customer's less than \$10,000 *de minimis* revenues as end user revenues, the universal service contribution that is ultimately passed through to the reseller's customers is based on the wholesale revenues received from the reseller. This contribution will be less than what would amount from calculating a contribution based on the reseller's retail revenues from its end users." This scheme is not competitively neutral and disadvantages facilities-based carriers as compared to resellers.

Most fundamentally, if the Commission exempts a class of contributors, then the obligations of all remaining contributors increases, contrary to the public interest and competitive neutrality. Accordingly, AT&T believes that no telecommunications service provider should be exempted from USF payment and reporting obligations.

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Connectivity Charge (see, e.g., Tariff F.C.C. No. 1, Section 2.5.9.C.1). The resale waiver is available only to customers that have filed their own USF Worksheets (FCC Form 457). If a reseller has filed a USF Worksheet, it would have a strong economic incentive to request a waiver of AT&T's tariffed Universal Connectivity Charge.

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**CONCLUSION**

For the reasons stated above, the Commission should deny Amtrak's claim for exemption and should eliminate the *de minimis* exemption for resellers, as CTIA suggests.

Respectfully submitted,

AT&amp;T CORP.

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March 25, 1998

**CERTIFICATE OF SERVICE**

I, Viola J. Carlone, do hereby certify that on this 25<sup>th</sup> day of March, 1998, a copy of the foregoing AT&T Opposition to Petitions for Reconsideration of the Fourth Reconsideration Order was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

  
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